

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE ARELLANO-CIGFUEGO,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 1:23-cv-01351-WBS-SAB-HC

ORDER DIRECTING RESPONDENT TO
FILE COPY OF PETITIONER'S
PURPORTED FINAL ORDER OF
REMOVAL

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 that challenges a Federal Bureau of Prisons' policy that excludes inmates with immigration detainers from applying their First Step Act ("FSA") Earned Time Credits ("FTCs" or "ETCs"). (ECF No. 1.) Respondent has moved to dismiss the petition, arguing, among other grounds, that Petitioner is "jurisdictionally and statutorily barred from FSA ETC sentence-offsets due to the final order of removal from another federal court." (ECF No. 17 at 3.¹) Respondent has submitted a declaration from a Correctional Programs Administrator for the Western Region of the Federal Bureau of Prisons who declared in pertinent part:

BOP has determined that Petitioner is ineligible to apply FTCs because the inmate is subject to a final order of removal under immigration laws pursuant to 8 U.S.C. § 1101(a)(17) and 18 U.S.C. § 3632(d)(4)(E)). I have personally reviewed and can verify the existence of the Final Order of Removal, dated May 10, 2010, that BOP

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 obtained through the Department of Homeland Security's Immigration and
2 Customs Enforcement.

3 (ECF No. 17-1 at 7–8.) However, Respondent has not provided the Court with a copy of the final
4 order of removal itself.

5 Pursuant to Rule 7 of the Rules Governing Section 2254 Cases in the United States
6 District Courts ("Habeas Rules"),² the Court will order Respondent to file a copy of Petitioner's
7 purported final order of removal and provide Petitioner an opportunity to file a response. See
8 Habeas Rule 7(a), (c) (providing that "the judge may direct the parties to expand the record by
9 submitting additional materials relating to the petition" and "must give the party against whom
10 the additional materials are offered an opportunity to admit or deny their correctness").

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Within fourteen (14) days of the date of this order, Respondent SHALL FILE a copy of
13 Petitioner's purported final order of removal; and
14 2. Within fourteen (14) days of the filing of the copy of the final order of removal,
15 Petitioner may file a response.

16 IT IS SO ORDERED.

17 Dated: July 9, 2024

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19 UNITED STATES MAGISTRATE JUDGE

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27 ² The Rules Governing Section 2254 Cases apply to § 2241 habeas petitions. See Rule 1(b) of the Rules Governing
28 Section 2254 Cases ("The district court may apply any or all of these rules to a habeas corpus petition not covered
by" 28 U.S.C. § 2254.).